Manitoba

Annual Report 1989 - 90*

Manitoba Labour Board

*For the Fiscal Year Ended March 31, 1990

91-05362/

TABLE OF CONTENTS

	PAGE
Letters of Transmittal	
A Message from the Chairperson	1
Introduction	2
Organization Chart	3
Expenditure Summary	4
Manitoba Labour Board Members	5
Summary of Activities	11
Library and Publications	12
Summaries of Significant Board Decisions Pursuant to:	
1. The Labour Relations Act	13
2. The Payment of Wages Act	22
3. The Pay Equity Act	25
Summaries of Significant Court Decisions	26
Statistical Tables	32
First Agreement Legislation (Review of Cases)	38
Final Offer Selection Legislation (Review of Cases) .	41

Minister of Labour

Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

The Honourable George Johnson, M.D.
Lieutenant-Governor of Manitoba

Your Honour:

I have the honour to present to you the Annual Report of The Manitoba Labour Board covering the period from April 1, 1989, to March 31, 1990.

Sincerely yours,

Darren Praznik

Darren Praznik
Minister

Manitoba

Labour

The Manitoba Labour Board

404 Power Building
428 Portage Avenue
Winnipeg, Manitoba, CANADA
R3C 0E2

(204) 945-3783

Honourable Darren Praznik,
Minister of Labour,
156 Legislative Building,
Winnipeg, Mb.
R3C 0V8

Dear Sir:

It is my pleasure to present to you the Annual Report of the Manitoba Labour Board covering tbe period from April 1, 1989, to March 31, 1990.

Yours truly,

J.M.P. Korpesho,
Chairperson.

A Message from the Chairperson of the Manitoba Labour Board

It is my pleasure to submit to you the 1989-90 Annual Report outlining the activities of The Manitoba Labour Board during that period of time.

As in previous years, the workload of the Board continued to expand along with the introduction of a number of new initiatives. The increasing utilization of Board Officers in a meditative role has resulted in the resolution of a number of disputes without the necessity of a formal hearing process.

The Board was encouraged by the feedback from those practitioners who reviewed a sample of our proposed Index of Written Reasons for Decision. It is our hope that this publication will be a useful reference guide to the labour and management community.

The Board wishes to express its appreciation to the labour and management community for their continued co-operation in some very hectic, and sometimes trying, situations. We believe that the continued co-operation between labour and management has contributed to maintaining a healthy and vibrant labour relations climate in Manitoba.

We look forward to the upcoming year, and hope to provide continuing guidance to the labour relations community.

J.M.P. Korpesho,
Chairperson

INTRODUCTION TO THE MANITOBA LABOUR BOARD

ROLE:

The Manitoba Labour Board is responsible for the adjudication of matters referred under

- The Labour Relations Act,
- The Workplace Safety and Health Act, and
- The Pay Equity Act.

The Board also acts as a wages board (the adjudicating body) for matters referred under

- The Payment of Wages Act,
- The Employment Standards Act,
- The Construction Industry Wages Act,
- The Vacations With Pay Act, and
- The Remembrance Day Act.

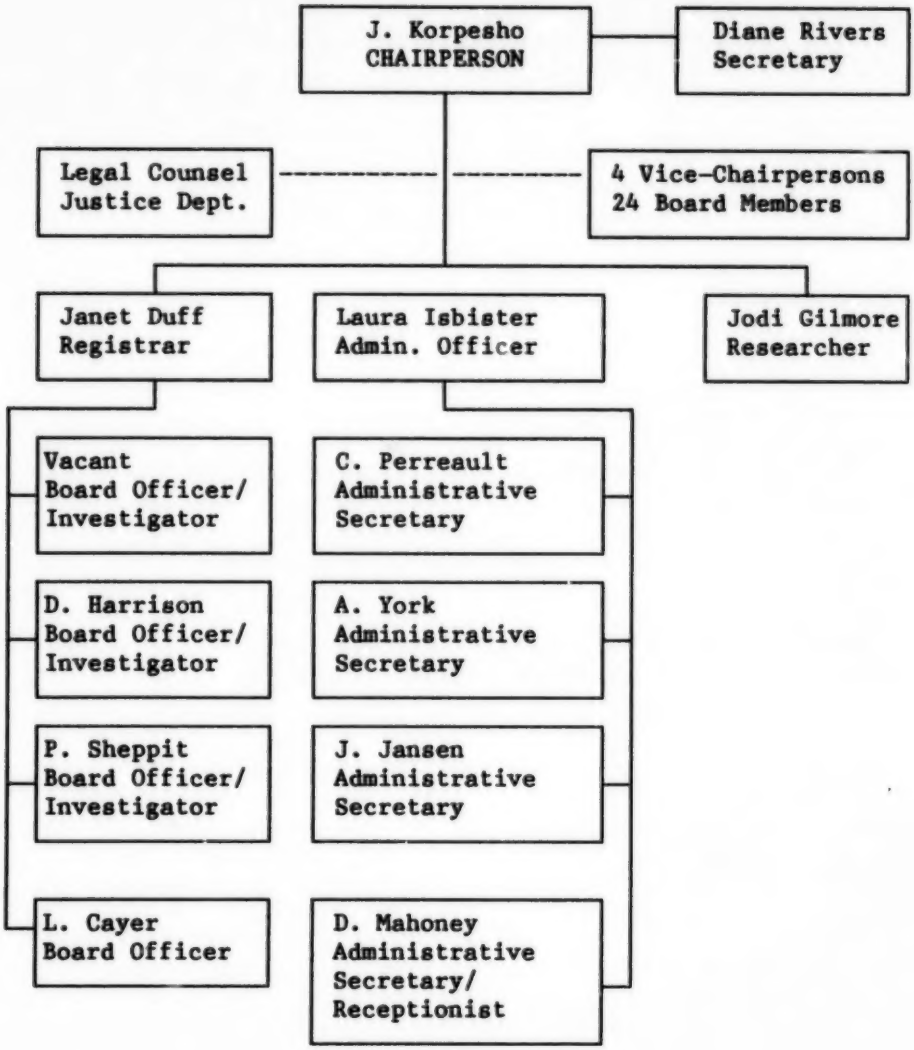
Although the Board conducts numerous formal hearings annually, a significant portion of the Board's workload is administrative in nature. Where possible, the Board encourages the settlement of disputes in an informal manner by appointing one of its Board Officers to assist the parties in resolving outstanding issues and complaints.

STRUCTURE:

The Manitoba Labour Board is a quasi-judicial body comprised of a full-time Chairperson, four part-time Vice-Chairpersons and twenty-four Board Members. There is equal representation of employer and employee views.

ORGANIZATION CHART:

MANITOBA LABOUR BOARD



1989-90
EXPENDITURE SUMMARY

	Estimated Expenditures	Actual Expenditures	Variance
Salaries	$450.9	$436.5	($14.4)
Operating Expenditures	$219.1	$217.4	($1.7)
Total	$670.0	$653.9	

Explanations

The surplus in Salaries was due to a delay in recruitment of one vacant Board Officer position.

MEMBERS OF THE BOARD

In the year under review, the Board consisted of the following members.

CHAIRPERSON:

John M.P. Korpesho: First appointed Chairperson of the Manitoba Labour Board in 1983 and has since been re-appointed. He has been with the Board since 1973, during which time he has held the positions of Board Officer, Registrar, and Vice-Chairperson/Registrar. Mr. Korpesho is a graduate of the University of Manitoba's Certificate Program in Public Administration. He is actively involved in numerous labour management committees, and is a regular guest lecturer at both the Faculty of Law and the Faculty of Administrative Studies at the University of Manitoba.

VICE-CHAIRPERSONS:

Diane E. Jones: Appointed on a part-time basis in 1985 and has since been re-appointed. She holds a Bachelor of Arts degree (Honours) from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Until 1984, Ms Jones practiced law with the firm of Aikins, MacAulay and Thorvaldson.

Joy M.K. Cooper: Appointed on a part-time basis in 1985, and has since been re-appointed. She holds a Bachelor of Arts degree (Honours), a Masters of Arts degree in Political Science, and a Bachelor of Laws degree from the University of Manitoba. Ms Cooper practiced law with the firms of Walsh, Micay & Co. and Cherniack Allen Cooper. She teaches Family Law at the Faculty of Law at the University of Manitoba, and is a member of the Council of the Manitoba Bar Association and Chairperson of the Canadian Bar Association's Task Force on Pensions.

Lawrie Cherniack: Appointed on a part-time basis in 1988. He is a partner in the law firm of Cherniack Allen.

New Appointment:

Jack M. Chapman, Q.C.: Appointed on a part-time basis in 1989. He is a senior partner in the law firm of Taylor McCaffrey Chapman Sigurdson in Winnipeg. Mr. Chapman is a life Bencher and past President of the Law Society of Manitoba. He is a charter member of the Society of Professionals in Dispute Resolution, and is a panel member of the American Arbitration Association. He is active as a chairperson in arbitration, conciliation, and mediation in Manitoba and elsewhere, and has lectured in labour law to the Department of Economics at the University of Manitoba.

EMPLOYER REPRESENTATIVES:

Jack McCormick: First appointed in 1977. Before his retirement, he had served as Senior Vice-President of Bristol Aerospace Ltd.

William J. Ptolemy: First appointed in 1978. He had been self-employed in the construction supply business. Mr. Ptolemy has represented the Winnipeg Construction Association on the Workplace, Safety and Health Council, as well as the Manitoba Labour Board.

Frank VanGinkel: First appointed in 1978. He has been involved in the construction industry for the greater part of his career, and most recently was a principal with Trident Construction Ltd. Mr. VanGinkel also has represented the Winnipeg Construction Association in a number of capacities.

A. Edward Stanton: Appointed in 1985. He had been employed by PRG Industries until his retirement in 1982. Mr. Stanton has served in many capacities including General Manager of Branches and has participated extensively in labour relations, having served on a number of joint labour/management study groups and government appointed labour relations committees.

Denis E. Sutton: Appointed in 1983. He has had extensive training in business administration and personnel management, and has extensive experience in labour relations in both the private and public sector. Mr. Sutton is currently employed with the Manitoba Telephone System as Vice-President, Human Resources. He has served as Chairman of the Industrial Relations Committee, Manitoba Branch, of the Canadian Manufacturers' Association, and is an active member of many labour relations committees and associations.

Robert Sparrow: Appointed in 1983. He brings with him an extensive knowledge of the hospitality industry having not only been President of the Manitoba Hotel Association, but also President of the Hotel Association of Canada.

Elizabeth M. Black: Appointed in 1985. She holds a Certificate from the University of Manitoba in Personnel and Industrial Relations. Ms Black has been employed in the capacity of Human Resources Manager in a variety of businesses since 1970. She has been very active in the Human Resource Management Association for many years, serving as President in 1980-81.

James R. Conner: Appointed in 1987. Now retired, he previously was in the industrial relations field with Hudson's Bay Mining and Smelting Company Limited, in Flin Flon, Manitoba. Mr. Conner brings a wealth of knowledge of the mining industry to the Board.

John D. Read: Appointed in 1987. He currently holds the positions of President of the Manitoba Hotel Association and President of the Hotel Association of Canada. Mr. Read is a member of the Manitoba Labour Management Review Committee, the Advisory Committee of the Applied Arts & Business Division of Red River Community College, the Airport Planning Consultative Committee, and the Tourism Association of Winnipeg.

Raymond N. Winston: Appointed in 1987. He has an extensive labour relations experience in the fashion industry. Mr. Winston currently is the Executive Director of the Manitoba Fashion Institute, Inc.

Carole M. Postnieks: Appointed in 1987. She is the Manager of Operations with Guertin Bros. Coatings & Sealants Ltd. Ms Postnieks has a wide range of experience in the manufacturing industry, from industrial engineering through to human resources. She has acted as a resource to several organizations in such areas as pay equity, handling of dangerous materials, retraining, and continuous improvement strategies, and is currently a Member of the Minimum Wage Review Board.

S. Jo Lopuck: - appointed in 1988. She had been self-employed in the construction industry for a number of years prior to her appointment to the Board, holding the position of Secretary-Treasurer of Modernfold (Western) 1966 Ltd. Ms Lopuck served as a Director of the Winnipeg Construction Association from 1975 to 1986 and was awarded an honourary lifetime membership in 1988. She also has served as a Director and an Executive Director of the Canadian Construction Association.

New Appointment:

Michael Kaufmann: Appointed in 1990. He has been involved in the electrical contracting industry since 1952. Mr. Kaufmann presently holds the position of Vice-President and General Manager of State Contractors Inc. He has held several elected positions in the construction industry, and is a past President of the Winnipeg Construction Association.

EMPLOYEE REPRESENTATIVES:

Ronald J. (Bud) Henderson: Appointed in 1969. He has served as Secretary of the Saskatoon, Saskatchewan, Labour Council; Executive Officer and Chief Conciliation Officer of the Saskatchewan Labour Board; Saskatchewan Representative of the Canadian Labour Congress; and Regional Director of the Canadian Union of Public Employees. From 1966 to 1969, Mr. Henderson held the position of President of the Manitoba Federation of Labour, CLC.

William F. Iverson: Appointed in 1970. He received his Certificate in Masonry in 1948 and was employed by various companies until 1966. In 1967, Mr. Iverson was elected Business Manager of the Bricklayers' & Masons' Local Union, a position he held until his retirement. He has been extensively involved in labour organizations, boards, committees, and associations, serving on the Executive Boards of the Manitoba and Winnipeg Building & Construction Trades Council and the Manitoba Federation of Labour, CLC.

John E. Pullen: Appointed in 1978. He has participated extensively in a variety of labour relations organizations and associations, serving as President of the Manitoba and Winnipeg Building & Construction Trades Council (1965-72), and President of the Manitoba Federation of Labour, CLC (1984-85). Mr. Pullen has recently retired from the Manitoba Government Employees' Association as its Director of Operations.

J. Arthur Coulter: Appointed in 1980. He has been involved in the labour movement for over 40 years in both elected and appointed positions. Mr. Coulter has served as a Member of the Manitoba Labour Management Review Committee and the Advisory Council of the Faculty of Administrative Studies of the University of Manitoba, as well as many government and community boards and commissions.

Brian Hunt: Appointed in 1983. He has been a member of the United Steelworkers of America since 1969, serving as an Organizer and then Staff Representative, and has been a Staff Representative of the Canadian Labour Congress. Mr. Hunt has actively participated in, and conducted, courses in all areas of labour relations.

Hugh McNeel: First appointed in 1983. He has been involved in the labour movement for the past 35 years as a member of the United Food and Commercial Workers' International Union, and for the past 12 years, has served as its International Representative, participating extensively in negotiations and allied labour relations affairs.

Maureen Morrison: Appointed in 1983. She obtained her Bachelor of Arts degree from McGill University in 1969, and has subsequently completed several courses towards a Certificate in Labour Relations. Since 1980, Ms Morrison has been employed as a Staff Representative of the Canadian Union of Public Employees. She is a past President of the Canadian Union of Public Employees, Local 1543 (Manitoba Daycare Workers). She has also served as Chairperson of the Canadian Union of Public Employees' Equal Rights and Opportunities Committee.

Bernie Atamanchuk: Appointed in 1985. He became a Union Representative with the Retail Clerks' Union in 1964 while employed by Canada Safeway Limited. In 1967, Mr. Atamanchuk graduated from the Canadian Labour College. He is presently employed by the Manitoba Food & Commercial Workers, Local 832.

Leo Desilets: Appointed in 1985. Employed by Canadian Rogers (Western) Ltd. for a number of years, he became actively involved in the Sheet Metal Workers' International Association. In 1973, Mr. Desilets became its full-time Business Manager and Financial Secretary. As well as serving as President of the Manitoba and Winnipeg Building & Construction Trades Council, he has participated on a number of labour related boards and committees, including the Manitoba Labour Management Review Committee and the Economic Advisory Council.

Karen Graham: Appointed in 1985. She became actively involved in labour relations in 1978 while employed by Olympic Pant & Sportswear Co. Ltd. Ms Graham is currently serving as an International Representative of the Amalgamated Clothing & Textile Workers' Union. She has participated extensively in labour related organizations, including the Winnipeg Labour Council and the Winnipeg Union Label League. She has also served as a Member of the Manitoba Labour Law Review Committee on Technological Change and Plant Closures.

Doug McFarland: Appointed in 1988. He has been actively involved in labour relations and is currently employed as a Staff Representative with the Manitoba Government Employees' Association.

New Appointments:

Doreen Rosaasen: Appointed in 1990. She is a Registered Nurse by profession and has been actively involved in various nurses' associations. Ms Rosaasen is currently a Staff Representative with the Manitoba Nurses' Union.

Lorraine Sigurdson: Appointed in 1990. She is currently employed as a National Representative with the Canadian Union of Public Employees. Ms Sigurdson is actively involved in collective bargaining and providing assistance to various locals.

Clive Derham: Appointed in 1990. He was formerly employed with the City of Winnipeg. Mr. Derham currently is employed as a Staff Representative with the Canadian Union of Public Employees, with primary emphasis being in the health care sector.

SUMMARY OF ACTIVITIES

Field Services

The Registrar is the official responsible for the supervision of the day-to-day field services of the Board. All applications filed with the Board pursuant to The Labour Relations Act are initially processed through the Registrar's office. The Registrar determines the hearing dates, assures the effective and efficient processing of each application and communicates with all parties in all matters relating to the scheduling of hearings or specific problems in the processing of any applications.

Reporting directly to the Registrar, the Board has a field staff of three Board Officers and one Board Clerk. During this reporting period there were 1,250 applications filed with the Board.

The Board Officers conduct investigations with respect to various applications filed with the Board. Board Officers are frequently appointed to act as Board Representatives in allegations of unfair labour practices, to endeavour to effect a settlement of the complaint. For this reporting period, Representatives were appointed in 39 cases, 72% of which were resolved. They also perform a variety of functions including acting as Returning Officer in Labour Board conducted votes, attending Board hearings, as well as assisting the Registrar in the processing of applications.

The Board Clerk is responsible for the day-to-day processing of all Payments of Wages/Employment Standards referrals, hours of work exemption requests and Expedited Arbitration applications.

Administrative Services

The Administrative Officer is responsible for the administrative support of the Board office including fiscal control and accountability of operational expenditures, office systems, procedures development to ensure the departmental and government policies are implemented.

The Board has an administrative support staff of five secretaries and one part-time Researcher.

The Board's word processing systems were upgraded with new equipment during this period which greatly enhanced the staff's ability to process applications as expeditiously as possible. During the upcoming reporting period it is anticipated that the Board will be developing an automated data retrieval system to greater assist it in providing accurate timely information.

It is noted that the Board disposed of 1,295 cases during this period. The Board extends its appreciation to all staff for their dedication and hard work during the reporting period.

Manitoba Labour Board Library

The Board maintains a small collection of texts and journals dealing with industrial relations and labour law. Since 1985, all arbitration awards and collective agreements must be filed with the Manitoba Labour Board, copies of which may be viewed at the Board's office.

Library hours are Tuesday to Thursday, 8:30 a.m. to 4:30 p.m.

Publications

The Board presently publishes:

- Compendium of Grievance Arbitration Decisions - a summary of all arbitration awards rendered in the province of Manitoba and filed with the Board during the calendar year.

- Guide to The Labour Relations Act - a booklet explaining in lay persons' terms the various provisions of The Labour Relations Act, and the role of the Manitoba Labour Board and Conciliation & Mediation Services. (available in both English and French)

- Annual Report - a publication disclosing the Manitoba Labour Board's staffing and membership, as well as highlights of significant Board and court decisions, and statistical analysis of the various matters dealt with during the reporting period.

- Activities of The Manitoba Labour Board - a quarterly publication providing information and statistics on all proceedings before the Board.

The Board is planning the publication of an index of written reasons which have been issued by the Board. This new publication may be available in 1990-91.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO THE LABOUR RELATIONS ACT

CASE NO. 1367/88/LRA
CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 998 and MANITOBA HYDRO and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2034

Reasons for Decision dated July 7, 1989

APPROPRIATE BARGAINING UNIT - Members of one bargaining unit performing same functions transferred to location under jurisdiction of different Union - Applicability of terms in creation certificate - Section 142(5)(d) and (e) of The Labour Relations Act applied.

The Applicant Union filed an application seeking a Board ruling in order to determine which Union had jurisdiction over three workers who had been transferred. The Employer and Intervening Union submitted that the three workers belonged to the Intervenor's bargaining unit.

The Applicant Union's Certificate from the Board restricted its membership to certain specific locations. Due to a shortage of space, three clerical workers belonging to the Applicant's Union were transferred to a location which, under the terms of both Unions' certificates, gave the Intervening Union jurisdiction over the workers in question.

The Applicant argued that the employees were performing the same functions as they did in their previous location. It was emphasized that other members of their department, while also moving to the same site, would remain with the Applicant's Union. As well, such a shift in bargaining units could result in lower wages for the employees in question. The Respondent and Intervenor countered that, as a result of the transfer, the employees no longer worked in areas mentioned in the Applicant Union's creating Certificate. Further, the employees would be performing functions similar to members of the Intervening Union. Finally, it is noted by the Respondent that, in the past, employees had been forced to switch unions to comply with the terms of the Certificates issued.

HELD: The Board admitted that both positions made considerable sense. However, in ruling that the employees should remain within the Applicant's bargaining unit, the Board rejected a strict constructionist approach to the Applicant Union's certificate. The Board recognized that considerable time had passed since the Certificate was issued and that

the Respondent's operations had expanded greatly since that time. It was noted that the Applicant Union currently represents clerical workers at a new location not mentioned in the Certificate. In its decision, the Board emphasized that the workers were being moved only because of a shortage of space at their original worksite and were performing identical job functions. As well, the Board placed heavy emphasis on the fact that the majority of clerical workers belong to the Applicant's Union and that the employees in question were more directly associated with members in the Applicant's bargaining unit.

CASE NO. 514/89/LRA
CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1254 and ST. VITAL SCHOOL DIVISION #6

Reasons for Decision dated August 15, 1989

APPLICATION FOR CERTIFICATION - MERGER - Educational support staff apply for certification and merger with pre-existing bargaining unit of clerical workers.

The Applicant filed an Application for Certification for a bargaining unit consisting of para-professional educational support staff in the St. Vital School District. As well, the Applicant further requested that if the application was approved, the Board should consider merging the newly approved unit with an existing unit representing clerical workers in the same division. The Employer contested the proposed merger.

HELD: The Application for Certification was granted. However, the proposal for merger was denied. The Board considered past decisions dealing with educational support employees. It was noted that there had been no consistent policy with regards to educational support staff. Some units consist solely of clerical staff while others are composed of a broad spectrum of trades and professions. In rejecting the application for merger, the Board expressed concern about the potentially disruptive effects the merger might have on the smaller, pre-existing unit of clerical workers.

CASE NO. 1322/88/LRA
INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL 63 and MANITOBA THEATRE CENTRE

Reasons for Decision dated September 29, 1989

APPLICATION FOR CERTIFICATION - EMPLOYEE - Board refuses certification for lone stagehand temporarily employed by special arrangement for travelling production - Rule 28 of Board's Rules of Procedure applied.

The Applicant Union sought an Application for Certification for a unit consisting of "all stage property hands employed by the Manitoba Theatre Centre, Main Stage". At the time of application, the duties of Main Stage Property Hand were being carried out by only one person.

It was found that he alone was performing the Property Hand duties on Main Stage because of a special agreement between the Employer and a touring production company. Prior to this agreement, he was a member of the House Crew and covered by an existing collective agreement.

HELD: The Board dismissed the application, citing two reasons for their decision. First, the Board was satisfied that the employee's involvement as a Stage Property Hand was limited to the production of a single play. Given this short period of employment in this role, the Board concluded that he would not have satisfied the Board's definition of "employee" as set out in Subsection 28(c)(ii) of the Board's Rules of Procedure. Secondly, the Board found that other employees also performed the same duties, both at the Main Stage and in the Rehearsal Hall. Any attempt to confine the unit to the Main Stage would result in unnecessary fragmentation.

CASE NO. 238/89/LRA
THE MANITOBA GOVERNMENT EMPLOYEES' ASSOCIATION and
HEALTH SCIENCES CENTRE

Reasons for Decision dated October 20, 1989

APPLICATION FOR CERTIFICATION - EMPLOYEE - Definition - Supervisors do not exert effective control - Treated as Employees - Section 1 of The Labour Relations Act considered.

The Applicant Union applied for certification of a bargaining unit of Maintenance Supervisors at the Health Sciences Centre. The Employer contested the application on the grounds that the employees in question performed mainly management duties and were not eligible to be represented by a bargaining agent.

The Board was asked to determine whether or not Maintenance Supervisors, responsible for day-to-day supervision of skilled and unskilled employees, were "employees" within the contemplation of Section 1 of The Labour Relations Act. The

Respondent argued that the Supervisors were involved in the development of policy manuals, the formulation of budgets and were responsible for the discipline of employees beneath themselves, thereby executing management functions. The Applicant Union contended that the Supervisors control was severely restricted and claimed ultimate authority rested higher up in management.

HELD: In its decision, the Board reviewed similar cases issued by this and other Boards. The Board ruled that the proper test for determining whether a class of persons shall be classified as employees or management is whether or not the persons "effectively control the economic lives" of the persons under them.

The Board found that the Maintenance Supervisors did not exercise effective control and acted "merely as conduits for management". The Supervisors did not possess the requisite amount of control over those that were under their supervision. Further, it was held that a class of persons should not be denied freedom of association because they direct the work of others and perform limited managerial functions. These duties do not in themselves create a potential conflict of interest. Citing the ruling of the Canada Labour Relations Board, it was noted that the loyalty and integrity of supervisory staff should not be affected by union membership.

CASE NO. 336/89/LRA
UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 330W and
DOMINION MALTING LIMITED

Reasons for Decision dated October 20, 1989

APPLICATION FOR CERTIFICATION - EMPLOYEE - EXCLUSIONS - Supervisory and office staff not chiefly performing management functions - Only one individual excluded due to employment of a confidential nature.

APPROPRIATE BARGAINING UNIT - Employer requests Board not approve union as such approval would create situation whereby managers and workers belonging to same union. Subsection 39(1) and 39(2) considered.

The Union filed an Application for Certification for a bargaining unit consisting of employees at Dominion Malting

not already unionized. The Employer requested the exclusion of all but two persons in the unit, claiming that the employees in question were employed in a confidential capacity or were performing management functions.

Testimony suggested that the majority of the decisions were made by members of the board and the plant manager. It was found that the plant operations were centralized with little discretion being given to foremen and supervisors.

The Employer further objected to the Application for Certification on the grounds that as the Applicant Union represented all of the company's line employees, an intolerable situation would occur if management were to belong to the same union as their subordinates. Citing fears of conflict of interest, the Employer suggested that section 39(2) of The Labour Relations Act gave the Board the authority to determine an appropriate union for the employees in question. In effect, the Employer was asking that, if the Board should determine that the workers were employees, they should not be allowed to join the union of their choice.

HELD: With the exception of the bookkeeper, whom it was found performed confidential work, the Board found that all of the other workers were employees, as defined by The Labour Relations Act. In reaching this finding, the Board stated that none of the employees who sought to be excluded primarily performed management functions. At best, their duties were of a supervisory nature.

The Board disagreed with the Employer's interpretation of the relevant section. Section 39(2), it was stated, does not give the Board the discretion that the Employer's reading of the Act would indicate. Once the Board had determined an appropriate bargaining unit and found that the union had the requisite amount of support, it is required to respect the wishes of the employees with regards to their selection of bargaining agent. Stating that it is the right of the employees alone to choose their union, the Board refused to intervene and approved the bargaining unit requested.

CASE NO. 1019/88/LRA
THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 254 and PETER'S MECHANICAL & INSTALLATION LIMITED and DAPLEX PLUMBING AND HEATING LTD. and PETER'S PLUMBING AND HEATING LTD.

Reasons for Decision dated October 30, 1989

SUCCESSORSHIP - COMMON EMPLOYER - FAMILY RELATIONSHIP - Board determines sale of business takes place when contract won by union shop owned by father transferred to non union shop owned by son. Subsections 59(1) and 142(5) of The Labour Relations Act applied.

The Applicant filed an application seeking a Board ruling that the Respondents were carrying on "associated or related activities or businesses...under common control or direction". The Applicant sought a Board order that the Respondents be considered one employer for the purposes of The Labour Relations Act. The Respondents contested the application.

The Applicant Union represented workers employed by Peter's Plumbing and Daplex. In November of 1987, Peter's Plumbing was awarded a large subcontract. Subsequently, the contract was withdrawn with the consent of the general contractor and awarded without further tender to Peter's Mechanical. The employees belonging to the Applicant Union were fired and immediately hired by Peter's Mechanical, which was a non-union shop.

Evidence showed that the father owned a majority of Peter's Plumbing and was President of Daplex. His son owned Peter's Mechanical. Peter's Mechanical was incorporated on January 15, 1988. The offices of Peter's Mechanical were on the second floor of a building which housed both Daplex and Peter's Plumbing. Telephones on both floors could answer calls for either business. Materials and services for Peter's Mechanical were supplied by Daplex and vice versa.

HELD: While much of the evidence suggested that the father controlled Peter's Mechanical, the Board could find no positive evidence of "common ownership, financial control, contractual arrangements, interrelation of operations and centralized control of labour relations".

However, pursuant to Subsection 142(5) of The Labour Relations Act, the Board, on its own motion, sought to address the issue of whether Peter's Plumbing and/or Daplex had been sold to Peter's Mechanical. In determining whether or not a sale had taken place, the Board considered several factors: the similarity of work performed, whether or not a family relationship was involved, the continued employment of employees of the firm(s) being bought, transfer of expertise and any other factors that the Board might feel relevant to assist it in its determination.

Using these criteria, the Board was satisfied that a sale of the business had taken place between Daplex/Peter's Plumbing and Peter's Mechanical. Accordingly, the Board found that the collective agreement binding upon Daplex and Peter's Plumbing also applied for Peter's Mechanical.

CASE NO. 282/89/LRA
MANITOBA GOVERNMENT EMPLOYEES' ASSOCIATION and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA and VENTURE MANITOBA TOURS LTD.

Reasons for Decision dated February 28, 1990

COMMON EMPLOYER - SUCCESSORSHIP - Work transferred from provincial government department to crown corporation under control of same minister deemed to be associated activities under common control and direction.

The Applicant requested a ruling by the Board to determine if its collective agreement entered into with the Province of Manitoba was still in effect after work previously done by employees of the Department of Natural Resources was assigned to a crown corporation.

Prior to 1989, workers from the Department of Natural Resources were responsible for the maintenance and operations at Hecla Island Golf Course. In 1989, these duties were transferred from the Department to Venture Manitoba Tours (V.M.T.). The Applicant, in requesting a ruling from the Board, argued that the collective agreement previously signed should remain in force because V.M.T. was under the common control and direction of the Province. Alternatively, the Applicant suggested that if a sale of the business had occurred between the Province and V.M.T., the collective agreement remained in force by virtue of successor rights.

At the hearing, it was learned that V.M.T. is a crown corporation with ministerial control exercised by the Minister of Natural Resources. As well, the Board of Directors is appointed by the Minister. Further, the Executive Director of Administration for the Department of Natural Resources was on the Board of Directors and was responsible for the day-to-day operations of V.M.T.

HELD: The Board determined that the common control and direction of operations and maintenance at Hecla Island Golf Course was exercised by the Department of Natural Resources, whether it be through the Department itself, as was the case before 1989, or by V.M.T. subsequently. As a result, the Board was convinced that the collective agreement entered into between the Applicant and the Province remained in full force and effect.

CASE NO. 642/89/LRA
DIANNE L. ANDERSON and MANITOBA GOVERNMENT EMPLOYEES' ASSOCIATION and MANITOBA DEPARTMENT OF FAMILY SERVICES and CIVIL SERVICE COMMISSION

Reasons for Decision dated February 28, 1990

DUTY OF FAIR REPRESENTATION - UNFAIR LABOUR PRACTICE - Union refuses to represent both grievor and successful applicant in same dispute - Conflict of interest - Section 20(b) of The Labour Relations Act considered.

The Applicant asked the Board to determine if the Respondent Union failed in its duty to fairly represent her interests, thereby violating Section 20(b) of The Labour Relations Act.

The Applicant was the successful candidate for a vacant position in the Department of Family Services. An unsuccessful candidate filed an appeal, asking the Union to represent her in the appeal process. The Respondent agreed to her request although representation was subsequently provided by independent counsel. Later, while the hearing was underway, the Applicant also sought representation from the Union. The Union refused to appear for the Applicant, saying it could not support both parties in the same action. In light of this, the Applicant claimed the Union failed in its duty to fairly represent her interests.

HELD: The Board ruled that the Union did not commit an unfair labour practice as defined in Section 20(b) of The Labour Relations Act. No bargaining agent is obliged to advance grievances where such actions would be detrimental to the Union itself. In this case, representing the Applicant would have placed the Respondent Union in a conflict of interest. The Board found that the Union's decision to not support the Applicant was neither arbitrary nor discriminatory.

CASE NO. 346/88/LRA
MANITOBA FOOD AND COMMERCIAL WORKERS, LOCAL 832 and KITTSON INVESTMENTS TRADING AS SINGLETON'S PROFESSIONAL FAMILY HAIR CARE and A GROUP OF OBJECTING EMPLOYEES

Reasons for Decision dated March 9, 1990

APPLICATION FOR CERTIFICATION - EXCLUSIONS - Employee defined - Assistant Managers and Thirds, though performing limited managerial functions, deemed to be employees.

ORGANIZATIONAL CAMPAIGN - PETITION OF OBJECTION - Board determines no fraud or false pretense involved in organizational campaign.

The Applicant Union sought certification for a bargaining unit at a chain of hair care salons consisting of all managers, assistant managers, thirds, stylists and receptionists. With the exception of the stylists, the Employer requested the exclusion of all other classifications, claiming that the managers and assistants primarily performed management functions and that the thirds and receptionists did not share a community of interest with the stylists.

Evidence showed that the chain of salons had a highly structured organization, with all significant business decisions and many routine matters being dealt with by head office. The Board was told that the additional responsibilities of the managers and their assistants were not inherently managerial in nature and that their duties were, for the most part, identical to those of the other salon employees.

The Board was also presented with a letter of objection from a group of employees alleging that their signatures on their applications for membership were obtained under false pretenses.

HELD: The Board found that the assistant managers should properly be classified as employees. The Board emphasized how little independent judgement and discretion was exercised by both the managers and assistant managers. The roles of both classifications were seen as primarily super- visory, with the most decisions of any significance being made from the head office.

The Board, however, did note that in certain instances managers had participated in cases of discipline and dismissal. Recognizing the concerns over the appropriateness of including persons who exercise such functions in the same bargaining unit as other employees, the Board determined that managers should be excluded from the unit in question. This, however, was not an impediment to certification of managers as a separate unit. The Board also found that the thirds and receptionists should be included in the stylists' bargaining unit as a sufficient community of interest existed.

The Board dismissed the charges of irregularities in the Union's organizational campaign, ruling that all applications were signed voluntarily and without deception.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO THE PAYMENT OF WAGES ACT

CASE NO. 25/89/PWA
EXECUTIVE HOMES LTD. and KATHLEEN WERESTIUK

Reasons for Decision dated August 3, 1989

EMPLOYEE - INDEPENDENT CONTRACTOR - Definition - Sales agent for real estate firm determined to be employee - section 1(h) of The Employment Standards Act considered.

The Board was asked to determine whether the Applicant, was an independent contractor or an "employee" within the contemplation of The Employment Standards Act and The Vacations With Pay Act.

The Applicant was engaged by the Employer to show and sell new homes. Evidence revealed that she worked fixed hours for the Employer and received a 1.5% commission against a draw of $500 every two weeks, with the percentage subsequently increased to 2%. The Applicant had a specific schedule and was required to inform management of any absences or changes in plans. While there was no direct supervision of the Applicant, she did not have the authority to close any sale without management approval beforehand.

The Employer argued that the Applicant was excluded from the provisions of The Employment Standards Act, by virtue of section 1(h). Section 1(h) stated that professionals were not covered by the Act. Noting that real estate agents and brokers are regulated by The Real Estate Brokers Act, the Employer submitted that the Applicant was outside of the scope of the relevant legislation.

HELD: In reaching its decision, the Board noted that the facts in this case bore a striking similarity to that of Today Homes (East) Ltd. and R. Glugosh. As in that case, it was determined that the Applicant should be treated as an employee. In light of the evidence, the Board was satisfied that the Employer exercised sufficient control over the Applicant so as to characterize the relationship as that of employee-employer.

The Board did not accept the Employer's interpretation of section 1(h) of The Employment Standards Act. In rejecting the Employer's arguments, the Board stated that section 1(h) can only be properly understood when read in consideration with the initial wording of section 1. After expressing initial doubts as to whether real estate agents qualify as "professionals", the Board stated an exclusion would not occur simply by virtue of a person's qualifying as a professional.

Instead, the correct test was whether the person in question was practicing his/her trade in a professional relationship with a client. In the present case, it was found that the Applicant did not work on a professional/client basis, but rather served as an in house employee. Given this, the Applicant was entitled to wages owing upon her termination of employment.

CASE NO. 1248/88/PWA
PROVINCE OF MANITOBA, MANITOBA GOVERNMENT SERVICES and F. NELSON DOBRIDGE, ET AL

Reasons for Decision dated January 9, 1990

WAGES - COLLECTIVE AGREEMENT - Security Guards on rotating shifts entitled to overtime pay - Collective Agreement takes precedence over government regulation.

In 1982, the Department of Government Services established a rotating shift schedule whereby employees worked seven or eight days at a time, followed by two or four days off. No overtime was paid for the hours worked. As a result of complaints filed with the Employment Standards Division, the Board was asked to determine if the Employees were entitled to overtime.

Section 32 of The Employment Standards Act provides that overtime rates must be paid to all employees who work in excess of 40 hours per week. The Employees in question were members of the Manitoba Government Employees' Association and covered by a collective agreement which stated that the regular hours of work were 8 hours a day and 40 hours per week. While the agreement noted that certain classifications were exempted from receiving overtime benefits, security guards were not one of the exempted classifications. Given this, the Employees claimed that they were entitled to overtime benefits for the hours worked in excess of the standard.

The Employer argued that the Employees were not entitled to overtime because Manitoba Regulation 100/87 states that all classifications in which the maximum salary exceeds $17,272 were not eligible to receive overtime benefits. As the maximum wage for all Security Guards exceeded this figure, the Employer contended that no overtime should be paid.

At the hearing, it was found that the Regulation in question was filed in 1976 and had not been updated. At that time, the salary for Security Guards was less than $17,272. Since 1976, it was determined that Security Guards' salaries had more than doubled.

HELD: The Board found that the Employees were entitled to overtime benefits. In its decision, the Board stated that the Regulation existed in its original form by error or oversight only. No classification in the component sub-agreement had a maximum salary less than $17,272 at the time. As the Regulation was clearly outdated, the Board refused to be bound by its provisions.

In supporting the Employees' claim, the Board also held that a regulation cannot override the provisions of a collective agreement. Under The Payment of Wages Act, the Board is required to ensure whatever wages are owing to employees, not merely the minimum standards prescribed by The Employment Standards Act.

CASE NO. 1113/89/PWA
FLANDERS DESIGN & DEVELOPMENT INC. and JULIE IRETON

Reasons for Decision dated February 7, 1990

WAGES - Unauthorized deductions - Board determines no agreement existed allowing Employer to deduct cost of previously paid travel expenses from wages.

JURISDICTION - Board has right to deal with unauthorized deductions.

The Employee filed a claim pursuant to The Payment of Wages Act for reimbursement of unauthorized deductions from her Employer.

The Employee, who previously resided in Edmonton, testified that there had been an agreement that travel costs for an interview would be paid by the Employer if she accepted the position offered. After working for a short time she resigned, giving notice although none was required. The Employer argued that it was an implied term of the agreement that the Employee would reimburse the firm for the travel expenses paid by the firm if she left after working for only a short period. The Employer also contended that the Board had no jurisdiction to hear the case as the Act contained no specific provisions regarding unauthorized deductions of wages.

HELD: The Board ruled that the deductions could not be permitted as there was no agreement, expressed or implied, allowing the Employer to withhold wages in the case of an early departure by the Employee. The Board, while acknowledging certain limits to its jurisdictional scope, held that it was entitled to hear the case. Further, the Board stated that if the Employer felt it had a legitimate claim against the Employee for that debt, it should proceed to make that claim in court.

SUMMARY OF BOARD DECISION PURSUANT TO THE PAY EQUITY ACT

CASE NO. 606/89/PEA
MANITOBA COUNCIL OF HEALTH CARE UNIONS, ET AL and 23 HEALTH CARE FACILITIES and PROVINCE OF MANITOBA, ET AL

Reasons for Decision dated January 5, 1990

PAY EQUITY - IMPLEMENTATION PERIOD - Board rules that full pay equity does not have to be achieved within four year period - Application of subsection 7(3) of The Pay Equity Act discussed.

In an interim decision, the Board was asked by both parties to determine what amount of funding an employer was required to commit in order to achieve the goals of pay equity in the health care sector.

The Applicants argued that full funding must be achieved within the four year period referred to in subsection 7(3) of The Pay Equity Act. The Applicants suggested that a strict interpretation of subsection 7(3) created a conflict with the intent of the Act, as expressed in section 2. The Respondent Employers and Agencies took the position that subsection 7(3) served as a limit on the funding level to be committed by an employer, restricting increased to 1% of the subsequent year's payroll.

HELD: The Board held that subsection 7(3) served as a cap on the amount employers were required to commit to achieve pay equity's target. In making this interim ruling, it was the position of the Board that subsection 7(3) was not an oversight but the result of a conscious decision by the Legislature to place a limit on the funds committed to achieving pay equity. Given this, employers were only required to increase wages by 1% of the total payroll of the previous year.

The Board recognized that the result of the decision meant that the pay equity gap identified by the parties would not be closed within the given statutory time frame. However, as the Board noted that both parties had agreed to the principles of pay equity, nothing prevented the parties from voluntarily continuing the pay equity process until the program's goals are achieved.

SUMMARIES OF SIGNIFICANT COURT DECISIONS

BROWN ET AL and YMHA JEWISH COMMUNITY CENTRE OF WINNIPEG INC. and THE MANITOBA LABOUR BOARD, ET AL

Supreme Court of Canada
Reasons for Decision delivered June 8, 1989

Pursuant to leave to appeal granted on February 25, 1988, the Supreme Court of Canada heard the appeal from the Decision of the Manitoba Court of Appeal (see Reasons for Decision delivered July 22, 1987 - reviewed in Board's Annual Report for 1987-88).

The issues on the appeal to the Supreme Court of Canada were firstly whether the workers who participated in the job creation project, initiated by YMHA with Canada Employment and Immigration Commission under section 38 of The Unemployment Insurance Act, were employees within the meaning of relevant provincial legislation; and secondly, whether Manitoba's provincial wage laws were applicable to such workers who participated in the job creation project established pursuant to the Act.

In respect of the first issue, the Court was of the opinion that the workers were "employees" and that the YMHA was an "employer" within the definitions of those words contained in Manitoba's Payment of Wages Act and Construction Industry Wages Act. In reaching this conclusion, the Court observed that YMHA was responsible for the engagement of the workers, and was freely able to select workers and retain the power of selection of workers who participated on the construction project. Secondly, the top-up pay received by the workers from the YMHA constituted wages, and was not affected in this respect by The Unemployment Insurance Act. Thirdly, the YMHA had control and direction over the workers, the agreement between YMHA and the Commission not affecting this employer/ employee relationship.

In respect of the second issue, the Court was of the view that provincial wages laws were applicable to the workers participating in the job creation program question, and Parliament had no jurisdiction over labour relations in this case. The Court noted that the power to establish these programs was derived from the federal spending power, which did not in itself bring a matter, which was otherwise provincial, into federal competence. Parliament's decision to make a grant of money in a particular area could not be construed as an intention to regulate all related aspects of that area, and a decision to provide a job creation grant to organizations such as YMHA could not be construed, without

further evidence, as an intention to remove provincial labour law jurisdiction over the project. Furthermore, the job creation program could not be categorized as a federal undertaking contemplated by section 91 of The Constitution Act, 1867.

In the circumstances, the Court allowed the appeal of the workers, and restored the decision of the Manitoba Labour Board.

METROPOLITAN STORES (MTS) LTD. V. MANITOBA FOOD AND COMMERCIAL WORKERS LOCAL 832 ET AL

Manitoba Court of Appeal
Reasons for Decision delivered November 3, 1989

The appellant Metropolitan Stores appealed the decision of the Manitoba Court of Queen's Bench rendered on June 22, 1988 (reviewed in the Board's Annual Report for 1988-89) to the Manitoba Court of Appeal. The appellant had challenged the provisions of The Labour Relations Act relating to first collective agreements, arguing that the impugned legislation offended the equality provisions of the Canadian Charter of Rights and Freedoms. The Winnipeg Chamber of Commerce and the Manitoba Chamber of Commerce, which had intervened in support of the appellant, argued that the impugned legislation violated freedom of expression as protected by the Charter. It was further argued by the appellant that as the Board had in other cases imposed union- shop provisions, which in the appellant's view interfered with an employees' right of non-association, this reflected a violation by the legislation of freedom of association under the Charter.

The Court rejected the challenges to the legislation in respect of freedom of expression and the equality provisions of the Charter. In respect of the arguments regarding freedom of association, the Court did not find it necessary to decide whether freedom of association entailed a negative freedom not to associate, as it was of the opinion that the appellant had no status to challenge the legislation in these proceedings. The Court observed that the appellant's argument that the Board might impose union security clauses upon it was premature and hypothetical, and moreover was based on allegations that an employee other than one of their own employees had been affected by a provision in another collective agreement. It was noted that the appellant did not assert that any of its rights or freedoms had been infringed or denied, as was required under section 24 of the Charter. The Court further held that it could not be presumed that the Board would impose unconstitutional terms on the appellant.

In the result, the appeal was therefore dismissed.

The appellant Metropolitan Stores sought leave to appeal to the Supreme Court of Canada from the decision of the Manitoba Court of Appeal. On March 14, 1990, the Supreme Court of Canada denied the application for leave to appeal from the decision of the Manitoba Court of Appeal.

EXECUTIVE HOMES LTD. and WERESTIUK AND DIRECTOR OF EMPLOYMENT STANDARDS DIVISION and THE MANITOBA LABOUR BOARD

Manitoba Court of Appeal
Reasons for Decision delivered January 4, 1990

The appellant company had engaged the respondent real estate agent on a commission basis to sell new homes built by the appellant. The agent was required, as a term of the engagement, to attend at the appellant's show home during specific hours, to keep it open for viewing, and to make information available to prospective buyers. As a result of there not being many prospective purchasers buying a home from the appellant while the respondent agent was on duty, the agent's sales commission was less than the amount that would have been earned had the agent been paid the minimum wage for the hours spent on duty. The agent lodged a complaint with the Director of the Employment Standards Division, on the grounds of not having received minimum wage or vacation pay for hours of duty, which was then referred to the Board for adjudication. The Board had decided on the facts that the agent was an employee rather than an independent contractor, and was therefore entitled to no less than the minimum wage and vacation pay for her services. The appellant sought and was granted leave to appeal to the Court of Appeal on the question as to whether the Board had erred in law in concluding that the agent was an employee of the appellant rather than an independent contractor.

The Court observed that there was nothing on the record to indicate that the Board had misunderstood the distinction in law between an employee and an independent contractor or that it had misapplied the test as to whether the agent was an employee or an independent contractor.

In the result, with no error of law on the Board's part having been shown, the appeal was dismissed.

JET ROOFING LTD. AND AUGUSTIN ET AL and THE DIRECTOR OF EMPLOYMENT STANDARDS DIVISION and THE MANITOBA LABOUR BOARD

Manitoba Court of Appeal
Reasons for Decision delivered January 22, 1990

The Director of Employment Standards Division had conducted an audit of the appellant employer, and as a result made an order for wages owing to the employees in question. The Director's order classified certain employees of the employer for the purpose of determining wages under The Construction Industry Wages Act and regulations. The Director's order was referred to the Board for adjudication, pursuant to which the Board dealt with the classifications of the employees in questions, as well as with the quantum of wages owing.

The employer sought and was granted leave to appeal to the Court of Appeal from the Board's order on the questions as to whether, firstly, the Board exceeded its jurisdiction by classifying employees by job titles alone, without having or communicating to the applicant job descriptions; and, secondly, whether the Board exceeded its jurisdiction by proceeding with the hearing when the employees expressly stated that they did not want the Board to proceed.

In respect of the first question, the Court noted that the regulations under the Act did define some of the classifications in question and there was nothing on the record to indicate that the titles and job classifications were not well known in the industry. The Board was a specialized tribunal established by the legislature to bring its particular expertise to issues arising under employment legislation, and in the course of this proceeding, heard evidence in respect of the issue, including evidence from the employer. It could not be said therefore in the circumstances that the Board had erred in law or exceeded its jurisdiction in classifying the employees as it did.

In respect of the second question raised by the appeal, the Court noted the authority of the Director under subsection 8(3) of The Payment of Wages Act to investigate and examine the books and records of the employer, of his own accord, and to consequently make an order to the employer to pay wages owing in respect of its employees. The fact that employees did not pursue remedies available to them did not diminish the authority of the Director in this capacity, nor the jurisdiction of the Board, on further appeal or reference of the Director's order to it.

In the result, the appeal was dismissed.

THE MANITOBA GOVERNMENT EMPLOYEES' ASSOCIATION and THE LEGISLATIVE ASSEMBLY MANAGEMENT COMMISSION ET AL and THE MANITOBA LABOUR BOARD

Manitoba Court of Queen's Bench
Reasons for Decision delivered February 7, 1990

The Board rejected the application by the Manitoba Government Employees' Association (the Association) to be certified as bargaining agent for the Hansard Services employees of the Legislative Assembly, excluding the Hansard editor and those excluded by The Labour Relations Act.

On application by the Association to quash the Board's decision to reject the application for certification, the Court upheld the impugned decision. In doing so, the Court rejected the proposition that the employees in question were employees of the Crown, but rather were either employees of the Legislative Assembly or of the Legislative Assembly Management Commission. Together, The Legislative Assembly Act and The Legislative Assembly Management Commission Act indicated a clear intention to provide an independent body to act on behalf of the Legislative Assembly relative to the services required by the Assembly. There was nothing in such legislation to suggest that the employees hired by the Commission would be regarded as Crown or government employees; on the contrary, the whole tenor of the legislation was to demonstrate that such employees were to be identified as separate and distinct. Furthermore, the Court noted that the definition of "civil service" in The Civil Service Act excluded from the civil service those employees covered in the proposed bargaining unit subject of the application, and described those employees as clerical employees of the Legislative Assembly, as opposed to being employees within the civil service. The Court also rejected the argument that the Legislative Assembly Management Commission should be regarded as a Crown agency as defined in certain statutes, and that the Assembly staff were Crown employees.

The Court was of the opinion that the Board, given its wide powers under The Labour Relations Act, had the right to decide that parliamentary privilege applied to the Legislative Assembly and that any restriction of that privilege required clear and specific legislation of essentially the same express nature as was required to affect the Crown. Such conclusion, in the Court's opinion, was not unreasonable, much less patently unreasonable. Moreover, aside from this basis for rejecting the application to set aside the Board's decision, the Court was of the view that as the Legislative Assembly could not be categorized as either a "person" or a "corporation", it was not within the meaning of "employer" under The Labour Relations Act, and therefore not covered by the Act. Therefore, the definition of "employee" in The Labour Relations Act did not include employees of the

Legislative Assembly or its Management Commission, and the employees in question were not subject to The Labour Relations Act.

In the result, the application to set aside the Board's order was dismissed.

TABLE 1

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT BY THE MANITOBA LABOUR BOARD

APRIL 1st, 1989 - MARCH 31st, 1990

TYPE OF CASE	Cases Carried Over	Cases Filed	TOTAL	Disposition of Cases			Number of Cases Disposed of	Number of Cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	17	77	94	71	6	5	82	12
Application for Revocation	1	11	12	4	3	3	10	2
Application for Amended Certificate	2	19	21	20	0	1	21	0
Application re: Unfair Labour Practice	13	40	53	2	3	38	43	10
Application pursuant to Section 20[1]	5	10	15	1	8	4	13	2
Application for Board Ruling	7	27	34	11	0	10	21	13
Application pursuant to Section 87(1)[2]	2	17	19	6	0	12	18	1
Application pursuant to Section 10(1)[3]	0	6	6	2	0	3	5	1
Application pursuant to Section 10(3)[4]	3	10	13	10	1	1	12	1
Application for Reconsideration	2	20	22	4	11	2	17	5
Application for Successor Rights	1	1	2	0	0	1	1	1
Application pursuant to Section 76(3)[5]	0	0	0	0	0	0	0	0
Application pursuant to Section 22[6]	1	2	3	0	0	3	3	0
Application pursuant to Section 115(5)[7]	0	12	12	3	0	9	12	0
Application pursuant to Section 94.1[8]	6	33	39	23	1	6	30	9
Application re: appointment of Arbitrator/Selector[9]	0	1	1	1	0	0	1	0
Referral for Expedited Arbitration*	21	200	221	-	-	-	186	35
TOTALS	81	486	567	158	33	98	475	92

* See Table 4

KEY TO FOOTNOTES FOR TABLE 1

Duty of Fair Representation.

First Collective Agreement.

When an application for certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the application is disposed of.

Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this section are for an extension of this period of up to 90 days.

Religious Objector.

Access Agreement.

Request for the Board to appoint Arbitrators.

Final Offer Selection.

Appointment of Arbitrator/Selector as per conditions of Collective Agreement.

TABLE 2

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT RESPECTING CERTIFICATES ISSUED

APRIL 1st, 1989 - MARCH 31st, 1990

TYPE OF CERTIFICATE ISSUED	NUMBER OF CERTIFICATES ISSUED	NUMBER OF EMPLOYEES AFFECTED
NEW CERTIFICATES	71	2,220

TABLE 3

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT RESPECTING REPRESENTATION VOTES

APRIL 1st, 1989 - MARCH 31st, 1990

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Number of Pre-Hearing Votes Counted	Applications GRANTED After Vote	Applications DISMISSED After Vote	Outcome Pending
Certifications	12	866	N/A	8	4	0
Revocation	4	89	-	2	2	0

STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT RESPECTING REFERRALS FOR EXPEDITED ARBITRATION

APRIL 1st, 1989 - MARCH 31st, 1990

Cases Carried Over	Number of Referrals Filed	TOTAL	Number of Cases Mediator Appointed	Disposition of Cases			Number of Cases Disposed of	Number of Cases Pending
				Settled by Mediation	Settled by Parties	Settled by Arbitration		
21	200	221	124	122	19	45	186	35

TABLE 5

STATISTICS RELATING TO THE ADMINISTRATION OF THE EMPLOYMENT STANDARDS ACT

APRIL 1st, 1989 - MARCH 31st, 1990

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Rulings Made	Applications Withdrawn	Not Proceeded with By Applicant	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 32	20	356	376	347	6	6	359	17
Applications pursuant to Section 35	15	65	80	62	6	-	68	12
Applications pursuant to Section 12(1)	1	0	1	1	0	-	1	0

TABLE 6

STATISTICS RELATING TO THE ADMINISTRATION OF THE PAYMENT OF WAGES ACT

APRIL 1st, 1989 - MARCH 31st, 1990

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 8	108	331	439	302	75	377	62

TABLE 7

STATISTICS RELATING TO THE ADMINISTRATION OF THE VACATIONS WITH PAY ACT

APRIL 1st, 1989 - MARCH 31st, 1990

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Orders Issued by the Board	Claims Dismissed	Claims Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Plant Vacation Shutdown	0	5	5	4	1	0	5	0

TABLE 8

STATISTICS RELATING TO THE ADMINISTRATION OF THE WORKPLACE SAFETY & HEALTH ACT BY THE MANITOBA LABOUR BOARD

APRIL 1st, 1989 - MARCH 31st, 1990

TYPE OF CASE	Cases Carried Over	Number of Applications Filed	Total	Orders Issued	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Application for Remedy of Alleged Discriminatory Action	4	4	8	1	6	7	1
Appeal from Director's Order	3	2	5	2	1	3	2

TABLE 9

FIRST AGREEMENT LEGISLATION
REVIEW OF CASES FILED

APRIL 1st, 1989 to MARCH 31st, 1990

	UNION	EMPLOYER	DATE OF APPLICATION	OUTCOME OF APPLICATION	CURRENT STATUS
Pending from Last Reporting Period:					
1.	Manitoba Food & Commercial Workers, Local 832	Kittson Investments T/A for Singleton's Professional Family Hair Care	January 16, 1989	Board imposed first first collective agreement.	Expiry date: May 18, 1990
New applications filed during this Reporting Period:					
2.	Canadian Association of Industrial, Mechanical and Allied Workers, Local 1	Composite Technology (Canada) Limited	April 4, 1989	Board imposed first collective agreement.	Expiry date: June 1, 1990
3.	Manitoba Food & Commercial Workers, Local 832	VS Services Ltd., Winnipeg International Airport	May 10, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: July 1, 1992
4.	Maples Nurses M.O.N.A., Local 94	Maples Personal Care Home	May 12, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: April 30, 1991
5.	Manitoba Food & Commercial Workers, Local 832	Versa Food Services, 2055 Sheppard St., Winnipeg	May 17, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: July 1, 1992
6.	Manitoba Food & Commercial Workers, Local 832	The Brandon Club, Brandon	May 29, 1989	Board imposed first collective agreement.	Expiry date: July 30, 1990
7.	United Food & Commercial Workers International Union, Local 111	Bucyrus Blades of Canada Ltd.	June 28, 1989	Board imposed first collective agreement.	Expiry date: September 25, 1990

TABLE 9 FIRST AGREEMENT LEGISLATION - REVIEW OF CASES FILED (Continued)

APRIL 1st, 1989 to MARCH 31st, 1990

	UNION	EMPLOYER	DATE OF APPLICATION	OUTCOME OF APPLICATION	CURRENT STATUS
8.	Canadian Association of Industrial, Mechanical and Allied Workers, Local #1	L & M Radiator Ltd.	July 4, 1989	Withdrawn	
9.	International Union of Operating Engineers, Local 901	Rural Municipality of Gilbert Plains	July 10, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: December 31, 1989
10.	Canadian Association of Industrial, Mechanical and Allied Workers, Local #1	L & M Radiator Ltd.	August 2, 1989	Board imposed first collective agreement.	Union applied for Final Offer Selection December 1, 1989. Dismissed February 8, 1990. Expiry date: September 23, 1990
11.	Canadian Union of Public Employees, Local 3325	H & S Transport Ltd.	September 12, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: *
12.	United Brotherhood of Carpenters & Joiners of America, Local Union 343	J. Prall Construction Ltd.	September 22, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: May 31, 1990
13.	Manitoba Association of Health Care Professionals	Victoria General Hospital	October 17, 1989	Board imposed first collective agreement.	Expiry date: December 19, 1990.
14.	Canadian Union of Public Employees, Local 745	The Pas Public Library	November 6, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: December 31, 1991.
15.	Manitoba Food & Commercial Workers, Local 832	Association for Community Living, Virden	November 30, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: *
16.	Manitoba Food & Commercial Workers, Local 832	West-Man Dental Group, Brandon	December 12, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: February 1, 1991.

TABLE 9 FIRST AGREEMENT LEGISLATION - REVIEW OF CASES FILED (Continued)

APRIL 1st, 1989 to MARCH 31st, 1990

UNION	EMPLOYER	DATE OF APPLICATION	OUTCOME OF APPLICATION	CURRENT STATUS
17. Canadian Paperworkers Union, Local 341	Sunset Thermographers Ltd.	December 22, 1989	Parties voluntarily entered into a collective agreement.	Expiry date: March 9, 1992
18. United Food & Commercial Workers, Local 330W	Dominion Malting Limited	February 9, 1990	Parties voluntarily entered into a collective agreement.	Expiry date: *

* Collective agreement not yet filed with the Board at the time of printing.

TABLE 10

FINAL OFFER SELECTION LEGISLATION
REVIEW OF CASES FILED

APRIL 1st, 1989 to MARCH 31st, 1990

	DATE OF APPLICATION	EMPLOYER	UNION	STATUS
1.	April 27, 1989	Scott-Bathgate Ltd.	Bakery, Confectionery and Tobacco Workers, Local 389 (Applicant)	- Order No. 780 issued 89 05 11 - Vote Ordered - Request to Withdraw received 89 05 23 - Leave to Withdraw granted 89 05 23
2.	May 29, 1989	North of 53 Consumers Co-operative Limited, Flin Flon	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 785 issued 89 06 14 - Vote Ordered - Results of Vote (conducted 89 06 27) - to use F.O.S. - Selector agreed to by parties - Received notification 89 12 21 that parties reached agreement prior to Selector making decision
3.	May 29, 1989	Thompson Co-op Ltd., Thompson	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 784 issued 89 06 16 - Vote Ordered - Results of Vote (conducted 89 06 28) - to use F.O.S. - Selector agreed to by parties - Received notification 89 10 13 that parties reached agreement prior to Selector making decision
4.	June 19, 1989	Portage la Prairie Mutual Insurance Company	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 788 issued 89 07 07 - Voted Ordered - Results of Vote (conducted 89 07 18) - to use F.O.S. - Selector agreed to by parties - Decision pending
5.	June 28, 1989	Trojan Board Ltd.	United Brotherhood of Carpenters & Joiners of America, Local Union 343 (Applicant)	- Order No. 790 issued 89 07 07 - Vote Ordered - Results of Vote (conducted 89 07 14) - to use F.O.S. - Selector appointed by Board - Received notification 89 08 28 that parties reached agreement prior to Selector making decision

TABLE 10 FINAL OFFER SELECTION LEGISLATION - REVIEW OF CASES FILED (Continued)

APRIL 1st, 1989 to MARCH 31st, 1990

	DATE OF APPLICATION	EMPLOYER	UNION	STATUS
6.	July 18, 1989	University of Manitoba	Association of Employees Supporting Education Services (Applicant)	- Order No. 796 issued 89 08 04 - Vote Ordered - Results of Vote (conducted 89 08 17) - to use F.O.S. - Selector agreed to by parties - Received notification 89 08 25 that parties reached agreement prior to Selector making decision
7.	July 24, 1989	General Drugs Ltd.	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 799 issued 89 08 04 - Vote Ordered - Results of Vote (conducted 89 08 16) - to use F.O.S. - Selector agreed to by Board - Received notification 89 10 18 that parties reached agreement prior to Selector making decision
8.	August 25, 1989	Premier West Peat Moss Ltd.	United Food & Commercial Workers, Local 111 (Applicant)	- Order No. 814 issued 89 11 09 - Vote Ordered - Results of Vote (conducted 89 11 20) - to use F.O.S. - Selector agreed to by parties - Received notification 90 02 09 that parties reached agreement prior to Selector making decision
9.	September 29, 1989	Versa Food Services Ltd. - Keewatin Community College, The Pas	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 817 issued 89 11 23 - Vote Ordered - Results of Vote (conducted 89 12 07) - to use F.O.S. - Selector agreed to by parties - Received notification 90 03 09 that parties reached agreement prior to Selector making decision
10.	September 29, 1989	Versa Food Services Ltd. - CN Transcona Yards, Winnipeg	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 816 issued 89 11 23 - Vote Ordered - Results of Vote (conducted 89 12 07) - to use F.O.S. - Selector agreed to by parties - Decision pending

TABLE 10 FINAL OFFER SELECTION LEGISLATION - REVIEW OF CASES FILED (Continued)

APRIL 1st, 1989 to MARCH 31st, 1990

DATE OF APPLICATION	EMPLOYER	UNION	STATUS
11. November 30, 1989	River East School Division No. 9	River East Paraprofessional Association (Applicant)	- Order No. 834 issued 89 12 15 - Vote Ordered - Results of Vote (conducted 90 01 15) - to use F.O.S. - Selector agreed to by parties - Decision pending
12. December 1, 1989	R.M. of Tache	International Union of Operating Engineers, Local 901 (Applicant)	- Order No. 826 issued 89 12 15 - Vote Ordered - Received notification 89 12 21 that parties reached agreement prior to Selector being appointed
13. December 1, 1989	R.M. of Brokenhead	International Union of Operating Engineers, Local 901 (Applicant)	- Order No. 827 issued 89 12 15 - Vote Ordered - Results of Vote (conducted 89 12 27) - to use F.O.S. - Selector appointed by Board - Received notification 90 02 07 that parties reached agreement prior to Selector making decision
14. December 1, 1989	R.M. of North Cypress	International Union of Operating Engineers, Local 901 (Applicant)	- Order No. 825 issued 89 12 11 - Vote Ordered - Results of Vote (conducted 89 12 14) - to use F.O.S. - Selector agreed to by parties - Received notification 90 03 08 that parties reached agreement prior to Selector making decision
15. December 1, 1989	R.M. of Lac Du Bonnet	International Union of Operating Engineers, Local 901 (Applicant)	- Order No. 836 issued 90 02 08 - Vote Ordered - Results of Vote (conducted 90 02 16) - to use F.O.S. - Selector appointed by Board - Decision pending
16. December 1, 1989	R.M. of Oakland	International Union of Operating Engineers, Local 901 (Applicant)	- Order No. 833 issued 90 01 02 - Vote Ordered - Results of Vote (conducted 90 01 10) - to use F.O.S. - Selector agreed to by parties - Decision pending

TABLE 10 FINAL OFFER SELECTION LEGISLATION - REVIEW OF CASES FILED (Continued)

APRIL 1st, 1989 to MARCH 31st, 1990

DATE OF APPLICATION	EMPLOYER	UNION	STATUS
17. December 1, 1989	R.M. of Gilbert Plains	International Union of Operating Engineers, Local 901 (Applicant)	- Dismissal Order No. 853 issued 90 02 08
18. December 4, 1989	Unicity Taxi Ltd.	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 843 issued 90 02 19 - Vote Ordered - Results of Vote (conducted 90 02 28) - to use F.O.S. - Selector appointed by Board - Received notification 90 03 23 that parties reached agreement prior to Selector making decision
19. January 25, 1990	Northern Stores Inc. (Thompson)	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 842 issued 90 02 19 - Vote Ordered - Results of Vote (conducted 90 03 01) - to use F.O.S. - Selector appointed by Board - Decision pending
20. January 25, 1990	Northern Stores Inc. (Lynn Lake)	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 841 issued 90 02 19 - Vote Ordered - Results of Vote (conducted 90 02 21) - to use F.O.S. - Selector appointed by Board - Decision pending
21. January 30, 1990	Communities Economic Development Fund	Manitoba Government Employees' Association (Applicant)	- Order No. 838 issued 90 02 14 - Vote Ordered - Results of Vote (conducted 90 02 21) - to use F.O.S. - Selector agreed to by parties - Decision pending
22. February 1, 1990	Versa Food Services Ltd. (Repap Manitoba Inc. location)	Manitoba Food & Commercial Workers, Local 832 (Applicant)	- Order No. 837 issued 90 02 14 - Vote Ordered - Results of Vote (conducted 90 02 27) - to use F.O.S. - Selector agreed to by parties - Decision pending

TABLE 10 FINAL OFFER SELECTION LEGISLATION – REVIEW OF CASES FILED (Continued)

APRIL 1st, 1989 to MARCH 31st, 1990

DATE OF APPLICATION	EMPLOYER	UNION	STATUS
23. February 7, 1990	Indian & Metis Friendship Centre, Winnipeg	Manitoba Food & Commercial Workers, Local 832 (Applicant)	– Order No. 844 issued 90 02 23 – Vote Ordered – Results of Vote (conducted 90 03 05 & 07) – to use F.O.S. – Selector appointed by Board – Decision pending
24. February 7, 1990	Modern Dairies Limited, Flin Flon	Manitoba Food & Commercial Workers, Local 832 (Applicant)	– Order No. 845 issued 90 02 23 – Vote Ordered – Results of Vote (conducted 90 03 06) – to use F.O.S. – Selector appointed by Board – Decision pending
25. February 27, 1990	Neso Corporation Ltd. T/A The Pas I.G.A. (1979)	Manitoba Food & Commercial Workers, Local 832 (Applicant)	– Order No. 846 issued 90 03 08 – Vote Ordered – Results of Vote (conducted 90 03 22) – to use F.O.S. – Selector appointed by Board – Decision pending
26. February 27, 1990	The Winnipeg Art Gallery	Manitoba Government Employees' Association (Applicant)	– Order No. 847 issued 90 03 26 – Vote Ordered – Awaiting results
27. March 9, 1990	Carpentry Contractors Trade Division, Construction Labour Relations Association of Manitoba	United Brotherhood of Carpenters and Joiners of America, Local 343 (Applicant)	– Pending
28. March 23, 1990	Display Fixtures (Division of Westfair Foods)	United Brotherhood of Carpenters and Joiners of America, Local 343 (Applicant)	– Pending

TABLE 10 FINAL OFFER SELECTION LEGISLATION - REVIEW OF CASES FILED (Continued)

APRIL 1st, 1989 to MARCH 31st, 1990

DATE OF APPLICATION	EMPLOYER	UNION	STATUS
29. March 29, 1990	McGavin Foods Ltd.	Bakery, Confectionery and Tobacco Workers International Union, Local 389 (Applicant)	- Pending
30. March 29, 1990	Weston Bakeries (bakery)	Bakery, Confectionery and Tobacco Workers International Union, Local 389 (Applicant)	- Pending
31. March 29, 1990	Weston Bakeries Limited	Bakery, Confectionery and Tobacco Workers International Union, Local 389 (Applicant)	- Pending
32. March 29, 1990	Spear Construction Inc.	International Union of Operating Engineers, Local 901 (Applicant)	- Pending
33. March 29, 1990	Borland Construction Limited	T.E.L. Council of Unions (Applicant)	- Pending